

Introduced by Senator Alquist

February 18, 2011

An act to amend Sections 60010, 60200, and 60400 of the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 613, as introduced, Alquist. Instructional materials: open-source.

Existing law requires the State Board of Education to adopt at least 5 basic instructional materials in specified subject areas for use in kindergarten and grades 1 to 8, inclusive. Existing law also requires the governing board of each school district maintaining one or more high schools to adopt instructional materials that meet specified criteria for use in the high schools under its control.

This bill would require at least one-half, or one-half plus one in the case of an odd number, of the basic instructional materials adopted by the state board to be open-source instructional materials. The bill would require at least one of the instructional materials adopted by a high school governing board to be an open-source instructional material, thereby imposing a state-mandated local program. The bill would define an open-source instructional material as an instructional material that is available in a digital format, is free to view online, and may be developed in a specified manner.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 60010 of the Education Code is amended
2 to read:
3 60010. For purposes of this part, the following terms have the
4 following meanings unless the context in which they appear clearly
5 requires otherwise:
6 (a) “Basic instructional materials” means instructional materials
7 that are designed for use by pupils as a principal learning resource
8 and that meet in organization and content the basic requirements
9 of the intended course.
10 (b) “Commission” means the Curriculum Development and
11 Supplemental Materials Commission.
12 (c) “Curriculum framework” means an outline of the components
13 of a given course of study designed to provide state direction to
14 school districts in the provision of instructional programs.
15 (d) “District board” means the board of education or governing
16 board of a county, city and county, city, or other district that has
17 the duty to provide for the education of the children in its county,
18 city and county, city, or district.
19 (e) “Elementary school” means all public schools in which
20 instruction is given through grade 8 or in any one or more of those
21 grades.
22 (f) “Governing boards” means the state board and any one or
23 more district boards.
24 (g) “High school” means all public schools other than
25 elementary schools in which instruction is given through grade
26 12, or in any one or more of those grades.
27 (h) “Instructional materials” means all materials that are
28 designed for use by pupils and their teachers as a learning resource
29 and help pupils to acquire facts, skills, or opinions or to develop
30 cognitive processes. Instructional materials may be printed or
31 nonprinted, and may include textbooks, technology-based
32 materials, other educational materials, and tests.
33 (i) “Nonpublic school” means a school that both satisfies the
34 requirements of Section 48222, and is exempt from taxation under
35 Section 214 of the Revenue and Taxation Code.

1 (j) “Open-source instructional materials” means instructional
2 materials that are available in a digital format and free to view
3 online. The materials may be developed in either of the following
4 manners:

5 (1) Through a consortium of other states, of which the State of
6 California may be a part, that develops free open-source
7 instructional materials that are linked to the common core
8 academic standards developed by the Common Core State
9 Standards Initiative consortium.

10 (2) By a single author or publisher.

11 ~~(j)~~

12 (k) “School official” means a member of a governing board, a
13 city, county, city and county, or district superintendent of schools,
14 and a principal, teacher, or other employee under his or her charge.

15 ~~(k)~~

16 (l) “State board” means the State Board of Education.

17 ~~(l)~~

18 (m) “Supplementary instructional materials” means instructional
19 materials designed to serve, but not be limited to, one or more of
20 the following purposes, for a given subject, at a given grade level:

21 (1) To provide more complete coverage of a subject or subjects
22 included in a given course.

23 (2) To provide for meeting the various learning ability levels
24 of pupils in a given age group or grade level.

25 (3) To provide for meeting the diverse educational needs of
26 pupils with a language disability in a given age group or grade
27 level.

28 (4) To provide for meeting the diverse educational needs of
29 pupils reflective of a condition of cultural pluralism.

30 (5) To use current, relevant technology that further engages
31 interactive learning in the classroom and beyond.

32 ~~(m)~~

33 (n) (1) “Technology-based materials” means basic or
34 supplemental instructional materials that are designed for use by
35 pupils and teachers as learning resources and that require the
36 availability of electronic equipment in order to be used as a learning
37 resource. Technology-based materials include, but are not limited
38 to, software programs, video disks, compact disks, optical disks,
39 video and audiotapes, lesson plans, and databases.

(2) Technology-based materials do not include the electronic equipment required to make use of those materials, unless that equipment is to be used by pupils and teachers as a learning resource. However, this shall not be construed to authorize a school district to replace computers or related equipment in an existing computer lab or allow a school district to establish a new computer lab.

(3) Nothing in this subdivision shall be construed to relieve a school district of the obligation to provide pupils with sufficient textbooks or instructional materials pursuant to paragraph (1) of subdivision (c) of Section 60119. If a county office of education determines that a school district is out of compliance with paragraph (1) of subdivision (c) of Section 60119, that school district is not authorized to procure electronic equipment pursuant to paragraph (2) of this subdivision.

~~(n)~~

(o) “Test” means a device used to measure the knowledge or achievement of pupils.

SEC. 2. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, *of which at least one-half, or one-half plus one in the case of an off number, shall be open-source instructional materials*, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading. However, the state board ~~may~~ *shall* not adopt basic instructional materials in this category or the category specified by paragraph (2) in the year succeeding the year in which the state board adopts basic instructional materials in this category for the same grade level.

(2) Mathematics. However, the state board ~~may~~ *shall* not adopt basic instructional materials in this category or the category specified by paragraph (1) in the year succeeding the year in which the state board adopts basic instructional materials in this category for the same grade level.

(3) Science.

1 (4) Social science.

2 (5) Bilingual or bicultural subjects.

3 (6) ~~Any other~~ Another subject, discipline, or interdisciplinary
4 areas area for which the state board determines the adoption of
5 instructional materials to be necessary or desirable.

6 (b) The state board shall adopt procedures for the submission
7 of basic instructional materials in order to comply with each of
8 the following:

9 (1) Instructional materials may be submitted for adoption in any
10 of the subject areas pursuant to paragraphs (1) to (5), inclusive, of
11 subdivision (a) not less than two times every six years and in any
12 of the subject areas pursuant to paragraph (6) of subdivision (a)
13 not less than two times every eight years. The state board shall
14 ensure that curriculum frameworks are reviewed and adopted in
15 each subject area consistent with the six- and eight-year submission
16 cycles and that the criteria for evaluating instructional materials
17 developed pursuant to subdivision (b) of Section 60204 are
18 consistent with subdivision (c). The state board may prescribe
19 reasonable conditions to restrict the resubmission of materials that
20 have been previously rejected if those resubmitted materials have
21 no substantive changes.

22 (2) Submitted instructional materials shall be adopted or rejected
23 within six months of the submission date of the materials pursuant
24 to paragraph (1), unless the state board determines that a longer
25 period of time, not to exceed an additional three months, is
26 necessary due to the estimated volume or complexity of the
27 materials for that subject in that year, or due to other circumstances
28 beyond the reasonable control of the state board.

29 (c) In reviewing and adopting or recommending for adoption
30 submitted basic instructional materials, the state board shall use
31 the following criteria, and ensure that, in its judgment, the
32 submitted basic instructional materials meet all of the following
33 criteria:

34 (1) Are consistent with the criteria and the standards of quality
35 prescribed in the state board's adopted curriculum framework. In
36 making this determination, the state board shall consider both the
37 framework and the submitted instructional materials as a whole.

38 (2) Comply with the requirements of Sections 60040, 60041,
39 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state
40 board's guidelines for social content.

1 (3) Are factually accurate and incorporate principles of
2 instruction reflective of current and confirmed research.

3 (4) Adequately cover the subject area for the grade level or
4 levels for which they are submitted.

5 (5) Do not contain materials, including illustrations, that provide
6 unnecessary exposure to a commercial brand name, product, or
7 corporate or company logo. Materials, including illustrations, that
8 contain a commercial brand name, product, or corporate or
9 company logo may not be used unless the board determines that
10 the use of the commercial brand name, product, or corporate or
11 company logo is appropriate based on one of the following specific
12 findings:

13 (A) If text, the use of the commercial brand name, product, or
14 corporate or company logo in the instructional materials is
15 necessary for an educational purpose, as defined in the guidelines
16 or frameworks adopted by the state board.

17 (B) If an illustration, the appearance of a commercial brand
18 name, product, or corporate or company logo in an illustration in
19 instructional materials is incidental to the general nature of the
20 illustration.

21 (6) Meet other criteria as are established by the state board as
22 being necessary to accomplish the intent of Section 7.5 of Article
23 IX of the California Constitution and of Section 1 of Chapter 1181
24 of the Statutes of 1989, provided that the criteria are approved by
25 resolution at the time the resolution adopting the framework for
26 the current adoption is approved, or at least 30 months prior to the
27 date that the materials are to be approved for adoption.

28 (d) If basic instructional materials are rejected, the state board
29 shall provide a specific, written explanation of the reasons why
30 the submitted materials were not adopted, based upon one or more
31 of the criteria established under subdivision (c). In providing this
32 explanation, the state board may use, in whole or in part, materials
33 written by the commission or any other advisers to the state board.

34 (e) The state board may adopt fewer than five basic instructional
35 materials in each subject area for each grade level if either of the
36 following occurs:

37 (1) Fewer than five basic instructional materials are submitted.

38 (2) The state board specifically finds that fewer than five basic
39 instructional materials meet the criteria prescribed by paragraphs

40 (1) to (5), inclusive, of subdivision (c), or the materials fail to meet

1 the state board's adopted curriculum framework. If the state board
2 adopts fewer than five basic instructional materials in any subject
3 for any grade level, the state board shall conduct a review of the
4 degree to which the criteria and procedures used to evaluate the
5 submitted materials for that adoption were consistent with the state
6 board's adopted curriculum framework.

7 (f) This section does not limit the authority of the state board
8 to adopt materials that are not basic instructional materials.

9 (g) If a district board establishes to the satisfaction of the state
10 board that the state-adopted instructional materials do not promote
11 the maximum efficiency of pupil learning in the district, the state
12 board shall authorize that district governing board to use its
13 instructional materials allowances to purchase materials as
14 specified by the state board, in accordance with standards and
15 procedures established by the state board.

16 (h) Consistent with the quality criteria for the state board's
17 adopted curriculum framework, the state board shall prescribe
18 procedures to provide the most open and flexible materials
19 submission system and ensure that the adopted materials in each
20 subject, taken as a whole, provide for the educational needs of the
21 diverse pupil populations in the public schools, provide collections
22 of instructional materials that illustrate diverse points of view,
23 represent cultural pluralism, and provide a broad spectrum of
24 knowledge, information, and technology-based materials to meet
25 the goals of the program and the needs of pupils.

26 (i) Upon making an adoption, the state board shall make
27 available to listed publishers and manufacturers and all school
28 interests a listing of instructional materials, including the most
29 current unit cost of those materials as computed pursuant to existing
30 law. Items placed upon lists shall remain thereon, and be available
31 for procurement through the state's systems of financing, from the
32 date of the adoption of the item and until a date established by the
33 state board. The date established by the board for continuing items
34 on that list shall be the date on which the state board adopts
35 instructional materials based upon a new or revised curriculum
36 framework. Lists of adopted materials shall be made available by
37 subject and grade level. The lists shall terminate and shall no longer
38 be effective on the date prescribed by the state board pursuant to
39 this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any school district.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) This section does not prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third-party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent shall develop, and the state board shall adopt, guidelines to implement this section.

SEC. 3. Section 60400 of the Education Code is amended to read:

60400. The governing board of each school district maintaining one or more high schools shall adopt instructional materials for use in the high schools under its control. *At least one of the instructional materials adopted by the governing board shall be an open-source instructional material.* Only instruction materials of those publishers who comply with the requirements of Article 3 (commencing with Section 60040) and Article 4 (commencing with Section 60060) of Chapter 1 of this part and of Section 60226 may be adopted by the ~~district~~ governing board.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to

1 local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

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